RECORD AND BRIEF

FILED
AUG 15 2016
OFFICE OF THE CLERK

Nos. 16-74, 16-86

In the Supreme Court of the United States

ADVOCATE HEALTH CARE NETWORK, ET AL.,
Petitioners,

v.

MARIA STAPLETON ET AL.,
Respondents.

SAINT PETER'S HEALTHCARE SYSTEM, ET AL.,
Petitioners,

v.

LAURENCE KAPLAN,
Respondent.

On Petitions for a Writ of Certiorari to the U.S. Courts of Appeals for the Seventh and Third Circuits

BRIEF OF THE THOMAS MORE SOCIETY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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BRIEF OF THE THOMAS MORE SOCIETY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICUS CURIAE*[1]

The Thomas More Society (TMS) is a nonprofit, religious liberties organization devoted to the defense and advocacy of religious freedom. Incorporated as a 501(c)(3) not-for-profit corporation in Illinois and based in Chicago, TMS accomplishes its organizational mission through litigation, education, and related activities.

The important and recurring question presented by these petitions concerning the meaning of the exemption for "church plan[s]" in the Employee Retirement Income Security Act of 1974 (ERISA) is critically important to thousands of nonprofit church-affiliated organizations, both large and small, across the Nation. For that reason, TMS joined an *amicus curiae* brief filed in support of the church-affiliated hospital in *Rollins* v. *Dignity Health*, No. 15-15351 (9th Cir. July 26, 2016), a case raising the same issue that is presented here. On numerous occasions, TMS has represented parties or *amici* (or has itself appeared as an *amicus*) in cases before this Court.

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[1] Letters of consent from all parties to the filing of this brief have been lodged with the Clerk. Pursuant to S. Ct. Rule 37.2, *amicus* Thomas More Society states that all parties' counsel received timely notice of the intent to file this brief. Pursuant to S. Ct. Rule 37.6, *amicus* further states that no counsel for a party wrote this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the *amicus curiae* or its counsel, has made a monetary contribution to this brief's preparation or submission.

See, *e.g.*, *Walker* v. *Texas Division, Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015) (representing *amici*); *Choose Life Illinois, Inc.* v. *White*, 558 U.S. 816 (2009) (order) (representing petitioners); *Gonzales* v. *Carhart*, 550 U.S. 124 (2007) (appearing as *amicus*); *Scheidler* v. *National Organization for Women, Inc.*, 547 U.S. 9 (2006) (representing petitioners); *Scheidler* v. *National Organization for Women, Inc.*, 537 U.S. 393 (2003) (same).

STATEMENT

The certiorari petitions in these cases (Nos. 16-74 and 16-86) raise a significant and recurring question of federal law that has divided the lower courts and created intolerable uncertainty for a wide range of nonprofit church-affiliated organizations across the country. In the decisions below, panels of the Third and Seventh Circuit, in conflict with decisions of the Fourth and Eighth Circuits and many district courts, have adopted a narrow definition of a crucial exception to ERISA upon which many church-affiliated organizations have relied for decades. In so doing, the lower courts disregarded a consistent thirty-year-old interpretation of the exception applied by all three of the federal administrative agencies responsible for administering and enforcing ERISA (or parallel provisions in the Internal Revenue Code). To restore certainty and uniformity to this vitally important area of federal law, further review by this Court is needed.

1. The petitions set forth in detail the relevant background to this litigation, including Congress's creation and subsequent amendment of the

exemption for "church plan[s]" in ERISA, 29 U.S.C. § 1002(33)(C)(i), the sensible interpretation of that exemption consistently applied over the past three decades by the Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC), and the proceedings in the courts below. 16-74 Pet. 3-12; 16-86 Pet. 3-13. Rather than repeat those details, we incorporate petitioners' discussion of them herein.

2. After the petitions for certiorari were filed in these cases, a panel of the Ninth Circuit exacerbated the circuit conflict by issuing its decision in *Rollins* v. *Dignity Health*, slip op., No. 15-15351 (July 26, 2016). In *Rollins*, as in the other two cases in which review is now being sought, a federal district court had certified the issue of the meaning of ERISA's "church plan" exemption as "a controlling question of law as to which there is substantial ground for difference of opinion" (28 U.S.C. § 1292(b)) – and the Ninth Circuit, just like the Third and Seventh Circuits, agreed with that assessment in taking the unusual step of accepting an interlocutory appeal. See *Rollins* v. *Dignity Health*, 2014 WL 6693891, at *3 (N.D. Cal. Nov. 26, 2014) (Henderson, J.) (after expressly acknowledging conflicting decisions, observing that "[o]ne of the best indications that there are substantial grounds for disagreement . . . is that other courts have, in fact, disagreed"); 16-86 Pet. App. 58a-60a (Shipp. J.) (same); 16-74 Pet. App. 53a (Chang, J.) (same) ("federal court decisions are all over the map").

When it came to deciding the merits, however, the Ninth Circuit in *Rollins* – without even citing, much less distinguishing, the contrary decisions of the

Fourth and Sixth Circuits – merely adopted wholesale the holding and reasoning of the Third and Seventh Circuits (right down to repeating the same hypothetical "disabled-veteran" statute imagined by the Third Circuit and reiterated by the Seventh Circuit). *Rollins*, slip op. at 11. And while the Ninth Circuit panel acknowledged that there were "two possible readings" of the statutory text, it refused to defer to the IRS's longstanding choice of interpretation because the agency's view was supposedly "based on an obvious misreading." *Id.* at 10, 20; cf. also *id.* at 11 (suggesting that the narrower reading of the statutory exception was "more natural").

3. ERISA is "an enormously complex and detailed statute." *Mertens* v. *Hewitt Associates*, 508 U.S. 248, 262 (1993). In the absence of an applicable exception, ERISA applies to a wide range of "pension benefit" and "welfare benefit" plans offered to employees in the United States. 29 U.S.C. §§ 1002(1)-(3), 1003(a). With regard to pension plans that provide retirement income, ERISA broadly covers "defined contribution" plans (such as a 401(k) plan) as well as the more traditional "defined benefit" plans. ERISA also covers a wide array of welfare benefit plans, including plans that are maintained "for the purpose of providing" either "for [their] participants or their beneficiaries, through the purchase of insurance or otherwise, . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services." 29 U.S.C. § 1002(1).

4. "Resolution of th[e] judicial conflict" over the question presented by these petitions "will affect millions of employees across the country who work for nonprofit religious organizations." Jeffrey A. Herman, *Resolving ERISA's "Church Plan" Problem*, 31 ABA J. LABOR & EMPLOYMENT L. 231, 232 nn. 5-6, 233 (2016). In both of these cases, the petitioners include religiously affiliated hospitals or healthcare systems that together employ many thousands of workers. And, as the Third Circuit recognized, with regard to *hospitals alone* fully "seven of the country's ten largest non-profit healthcare systems" are comprised of "religiously affiliated hospitals." 16-86 Pet. App. 16a. Indeed, as of 2013, *Catholic nonprofit hospitals alone* employed approximately 750,000 full- and part-time employees. Herman, *supra*, 31 ABA J. LABOR & EMPLOYMENT L. at 233 n.7.

But the impact of resolving the entrenched conflict over the "church plan" exception will not be limited to the admittedly huge number of employees who work at religiously affiliated hospitals and participate in pension or various other welfare benefit plans offered by their employers. ERISA creates numerous duties, rights, requirements, and remedies that are applicable not just to employees who are plan participants but also to the plans themselves as well as to plan sponsors, fiduciaries, administrators, and beneficiaries. In addition, as the list of more than 565 DOL advisory opinions and IRS private letter rulings included in the petition appendices makes clear (see 16-74 Pet. App. 64a-111a; 16-86 Pet. App. 74a-121a), the meaning of the "church plan" exception affects not only hospitals and healthcare providers but also a wide range of other types of

religiously affiliated entities, both large and small, all across the United States. These include retirement homes, nursing homes, day-care centers, schools and academies, universities, child-protection organizations, and other social service organizations, including those that serve immigrants, refugees, the elderly, and the poor.

INTRODUCTION AND SUMMARY OF ARGUMENT

These cases easily satisfy all of the traditional criteria of certworthiness. The common issue they raise has sharply divided the federal circuits and district courts; that division is now entrenched and, if anything, worsening; and the confusion and conflict is plainly not going away without this Court's intervention, as demonstrated by the Third Circuit's refusal to rehear the issue en banc. The issue presented is also recurring and exceedingly important. And, as petitioners have demonstrated (16-74 Pet. 26-34; 16-86 Pet. 25-34), the decisions of the Third and Seventh Circuits are fundamentally flawed. The petitions for certiorari should be granted.

I. The serious conflict and confusion in the lower federal courts (including what is now a 3-2 circuit conflict) can be resolved only by this Court. Although the Seventh and Third Circuit panels sought to minimize this conflict, those efforts were unavailing. The rulings of the two circuits (the Fourth and Eighth) that have held that a "church plan" need not be established by a church itself simply cannot be dismissed as "dicta." At the same time, the depth and severity of the confusion in the lower courts has

been repeatedly and expressly acknowledged by numerous judges and commentators, and indeed it was a principal basis for certifying the interlocutory appeals under 28 U.S.C. § 1292(b) in both of these cases as well as in *Rollins* v. *Dignity Health*, slip op., No. 15-15351 (9th Cir. July 26, 2016).

As *Rollins* makes clear, further percolation is unlikely to produce any additional analysis or arguments on either side. Accordingly, the issue is now ripe for this Court's resolution, and these cases (in which both parties are represented by experienced and capable counsel) are excellent vehicles for addressing an issue of truly national importance. Without this Court's intervention, nonprofit church-affiliated organizations across the country will face conflicting interpretations of ERISA depending on which state or states they operate in. Large church-affiliated organizations with operations and employees in multiple states may face conflicting obligations, as may both large and small nonprofits located on or near the boundaries of those circuits that have provided divergent answers to the question presented.

This confusion and lack of uniformity is all the more intolerable because, for thirty years, nonprofits have relied on the consistent advice of the IRS, DOL, and PBGC concerning the meaning of an ERISA "church plan." The decisions below reject that settled understanding. What is more, the need for uniformity is especially great in the context of ERISA. Indeed, Congress included in ERISA an express preemption clause precisely in order to help ensure that federal law relating to pension and welfare benefit plans would be uniform throughout

the country, at least when the statute covers a benefit plan. Not surprisingly, this Court has repeatedly granted review to address the scope of ERISA preemption as well as to resolve disagreements in the lower courts over the meaning of ERISA's substantive or procedural provisions. It should do so here as well.

II. The issue presented is recurring and extremely important. Its resolution will have a profound effect on countless church-related nonprofit organizations across the country as well as on millions of individuals who are participants in benefit plans offered by those organizations (or are beneficiaries, fiduciaries, or administrators of those plans). As the petitioners have demonstrated, a wave of lawsuits is now flowing through the federal courts (many of them large putative class actions) that threaten church-related organizations with massive liability, including claims for retroactive penalties and attorney's fees. Both the legal and the financial stakes for these organizations could hardly be higher. And this burden falls not just on hospitals and large healthcare organizations such as several of the petitioners in these cases, but also on a range of nonprofit organizations, both large and small, that are dedicated to providing a wide array of educational and social services to needy recipients, including the poor, disabled, and elderly.

ARGUMENT

I. REVIEW IS NEEDED TO RESOLVE THE SERIOUS CONFLICT AND CONFUSION IN THE LOWER COURTS

As petitioners have shown (*e.g.*, 16-74 Pet. 22-26), the lower federal courts are in disarray over the

proper interpretation of the "church plan" exemption in ERISA. Tellingly, the Seventh Circuit acknowledged that this issue "is springing up across the country" and has sharply "divided" the district courts. 16-74 Pet. App. 3a-4a (expressly disagreeing with decisions of district courts in Maryland, Colorado, and Michigan). Similarly, the Third Circuit correctly observed that in recent years "a new wave of litigation" has hit the federal courts as litigants – virtually all, it should be added, represented by the same handful of enterprising plaintiffs'-side law firms – have sought to call into question what until recently had been the settled understanding of the "church plan" exception (consistently adopted by the federal courts, and the responsible federal agencies, following the 1980 amendment to ERISA). 16-86 Pet. App. 8a-9a; see also *id.* at 8a (expressly disagreeing with additional district court decisions in Maine and Indiana).

Oddly, the Seventh Circuit stated that the Third Circuit was "the first circuit court to weigh in" on this issue (16-74 Pet. App. 3a). But that was clearly mistaken. Indeed, as the Seventh Circuit itself later acknowledged, as early as 2001 the Fourth Circuit had unambiguously stated (consistent, again, with the settled understanding in the federal courts and responsible federal agencies) that "'a plan established by a corporation associated with a church can still qualify as a church plan'" (*id.* at 16a (quoting *Lown* v. *Continental Cas. Co.*, 238 F.3d 543, 547 (4th Cir. 2001)). See also *Chronister* v. *Baptist Health*, 442 F.3d 648, 651-52 (8th Cir. 2006) (adopting same interpretation as in *Lown*). The Fourth Circuit's clear rejection of any requirement that a plan must

be established by a church itself in order to qualify as a "church plan" hardly qualifies as only "tangentially address[ing] the question." 16-74 Pet. App. 16a. Compare 16-86 Pet. App. 8a (Third Circuit acknowledged that *Lown* not only "consider[ed] the question" but also "came to" a "conclusion" about how it should be answered).

Nor were the Seventh and Third Circuits correct in brushing aside the Fourth Circuit's holding on the ground that it was "mere dicta." 16-74 Pet. App. 16a; see also 16-86 Pet. App. 8a. As petitioners have demonstrated (*e.g.*, 16-74 Pet. 24-25), the courts of appeals in both *Lown* and *Chronister*, in resolving threshold legal questions concerning their subject matter jurisdiction (as both cases had been removed to federal court based on ERISA), initially addressed whether a benefit plan, in order to qualify as a "church plan," must be established by a church. It was only *after* concluding that the answer to that question was no that both circuits went on to examine whether the plan-maintaining entities at issue were associated with a church (and to conclude that they were not). The first step in this structured jurisdictional analysis is hardly dicta. And, as petitioners have demonstrated (16-74 Pet. 24-25; 16-86 Pet. 23-24), the district courts in the Fourth and Eighth Circuits clearly treat as binding these holdings of *Lown* and *Chronister*.[2]

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[2] The disarray in the lower court-decisions has been expressly acknowledged by numerous judges and commentators. See, *e.g.*, *Rollins* v. *Dignity Health*, 2014 WL 6693891, at *3-4 (N.D. Cal. Nov. 26, 2014) (Henderson, J.) (order certifying interlocutory appeal) (acknowledging conflicting decisions); 16-86 Pet. App. 58a-59a (Shipp. J.) (same); 16-74 Pet. App. at 43a, 53a (Chang,

This square 2-2 circuit conflict, of course, has now been exacerbated by the Ninth Circuit's decision in *Rollins* v. *Dignity Health*, slip op., No. 15-15351 (July 26, 2016). Like the Seventh Circuit, moreover, the Ninth Circuit was content largely to adopt the Third Circuit's reasoning (including going so far as to cite the same hypothetical statute invented by the Third Circuit panel). If the Ninth Circuit's decision is any indication, further percolation of this issue in the circuits is unlikely to lead to any additional analysis or development of the legal arguments on either side. Accordingly, the issue is now ripe for this Court's decision.[3]

As a consequence of this division of authority, the federal courts in Washington, Oregon, California, Idaho, Montana, Nevada, Arizona, Hawai'i, Guam, the Northern Mariana Islands, Wisconsin, Illinois, Indiana, Pennsylvania, New Jersey, Delaware, and the Virgin Islands now follow one definition of "church plan" under ERISA whereas the federal courts in Minnesota, Iowa, Missouri, Arkansas, North Dakota, South Dakota, Nebraska, Virginia, West Virginia, North Carolina, South Carolina, Maryland, Colorado, and Maine follow another. This Court

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J.) (observing that "federal court decisions are all over the map," including "contrary authority" in different circuits); Jeffrey A. Herman, *Resolving ERISA's "Church Plan" Problem*, 31 ABA J. LABOR & EMPLOYMENT L. 231, 232 nn. 5-6, 233 (2016) (recognizing that federal courts have "split" at least 8-5 on the issue) (citing cases).

[3] Given the participation on both sides of these cases of party counsel who clearly are knowledgeable about and experienced with the issue presented, these cases are an ideal vehicle for resolving the entrenched confusion in the lower courts.

should grant review to ensure that this important exemption in ERISA has one and only one meaning throughout the country. Such uniformity is especially important for the many church-affiliated entities with operations or employees in more than one of these circuits, including those that are based on or near the borders separating the Eighth and Ninth Circuits, the Seventh and Eighth Circuits, and the Third and Fourth Circuits. See *Conkright* v. *Frommert*, 559 U.S. 506, 520 (2010) (noting problems that arise from interpretations of ERISA under which "employees could be entitled to different benefits depending on where they live, or perhaps where they bring a legal action").

This entrenched division of authority is all the more intolerable for nonprofit church-affiliated organizations, moreover, because it has developed only recently and after a long period in which there *was* uniformity in the understanding of the meaning of a "church plan" – including uniform advice from the federal administrative agencies responsible for dealing with ERISA and related provisions of the tax code (DOL, IRS, and the PBGC). See *Thorkelson* v. *Publishing House of Evangelical Lutheran Church in America*, 764 F. Supp. 2d 1119, 1125 (D. Minn. 2011) (noting that broader reading of "church plan" is one that "[r]el[ies] on thirty years of agency determinations and court decisions"). Many church-affiliated nonprofits, both large and small, have relied on this agency advice and settled interpretation for decades. If the settled understanding of a "church plan" is going to be called into question, and the longstanding views of the federal agencies who administer ERISA disregarded,

it should be the result of a decision by *this Court*, informed by the views of the Solicitor General.

Finally, the need for uniformity is especially compelling in the context of ERISA. In an effort to ensure uniformity in federal law applicable to covered employee benefit plans, Congress included in ERISA a preemption provision, 29 U.S.C. § 1144(a), that is both "comprehensive" and "broad." *Gobeille* v. *Liberty Mutual Ins. Co.*, 136 S. Ct. 936, 943 (2016). Over the years, this Court repeatedly has granted review to address the meaning of ERISA's preemption clause in order to ensure that Congress's professed objective of uniformity is achieved. See, *e.g.*, *ibid.* (citing various cases that have addressed "the important issue of ERISA pre-emption"); *Egelhoff* v. *Egelhoff*, 532 U.S. 141, 146-50 (2001) (citing additional cases). Toward the same end, this Court has also repeatedly resolved disagreements in the circuits over the meaning of ERISA's substantive and procedural provisions. See, *e.g.*, *Conkright* v. *Frommert*, 559 U.S. 506 (2010). Allowing the scope of an important exception to ERISA – for "church plans" – to be applied differently in different circuits would seriously undermine Congress's uniformity objective. For that reason as well, further review is warranted.

II. THE ISSUE PRESENTED IS RECURRING AND EXTRAORDINARILY IMPORTANT TO A WIDE RANGE OF NONPROFIT CHURCH-AFFILIATED ORGANIZATIONS

It cannot be seriously disputed that the issue presented by these petitions arises with regularity in the federal courts. Indeed, as petitioners have demonstrated (*e.g.*, 16-74 Pet. 13-15), in recent years

federal courts have been inundated with large putative class actions and other lawsuits calling into question the validity of the long-settled understanding of the "church plan" exception to ERISA. The lawsuit involving Advocate Health Care Network, which has 33,000 employees (16-74 Pet. 9), is illustrative. This is precisely the kind of recurring federal question that deserves this Court's attention.

The legal stakes could hardly be higher. ERISA creates numerous duties, rights, requirements, and remedies that are applicable to ERISA plans as well as to plan participants, sponsors, fiduciaries, administrators, and beneficiaries. To plan fiduciaries, for example, the statute assigns "a number of detailed duties and responsibilities, which include 'the proper management, administration, and investment of [plan] assets, the maintenance of proper records, the disclosure of specified information, and the avoidance of conflicts of interest.'" *Mertens*, 508 U.S. at 251-52 (quoting *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 142-43 (1985)); see also, *e.g.*, 29 U.S.C. §§ 1104, 1106, 1109. See generally *Gobeille*, 136 S. Ct. at 944-45 (describing ERISA's "extensive" requirements relating to "reporting, disclosure, and recordkeeping" imposed on welfare benefit plans). ERISA also includes "six carefully integrated civil enforcement provisions" authorizing suits in federal court by plan participants, beneficiaries, and others (including DOL) to enforce ERISA's requirements and obtain certain specified remedies. *Russell*, 473 U.S. at 146; see also, *e.g.*, 29 U.S.C. §§ 1132(a), 1140.

The meaning of the "church plan" exception, of course, will determine whether ERISA's wide range

of duties, rights, requirements, and remedies are applicable to the employee benefit plans of thousands of church-affiliated nonprofit organizations. But ERISA's far-reaching regulatory impact on those employee benefit plans to which it applies (and on these plans' participants, beneficiaries, sponsoring organizations, fiduciaries, and administrators) is not limited to these *affirmative* obligations and duties. It also includes the powerful *negative* (preemptive) effect of ERISA on state laws that would otherwise apply to employee benefit plans but for ERISA's coverage. Because of ERISA's broad preemption clause (see page 13, *supra*), those plans (if they are indeed governed by ERISA) will also no longer be subject to a variety of requirements imposed under state law. For this reason, it is difficult to imagine an issue that has a more transformational impact on the overall legal environment in which the affected church-affiliated organizations administer their employee benefit plans than the issue presented by these petitions.

The financial stakes are also enormous. Many of these pending lawsuits seek to impose on nonprofit organizations massive liability and/or retroactive penalties under ERISA. See 16-74 Pet. 21-22; see also *Rollins*, slip op. at 7 (noting that plaintiffs were seeking money damages, statutory penalties, injunctive relief, and attorney's fees). Significantly, many of the putative class actions also involve tens of thousands of plaintiffs claiming to have had their ERISA rights violated. See 16-74 Pet. 13-14 n.8. And as this Court has remarked with respect to ERISA's reporting, recordkeeping and disclosure requirements, "[t]hese various requirements are not mere

formalities. Violation of any one of them may result in both civil and criminal liability." *Gobeille*, 136 S. Ct. at 945. Under this Court's traditional approach, these circumstances are more than enough to demonstrate that the federal issue presented here is sufficiently important and recurring to warrant this Court's attention.[4]

As petitioners have correctly pointed out (*e.g.*, 16-74 Pet. 17-21), if left unaddressed the massive legal uncertainty created by the conflicting decisions in the lower courts threatens to impose severe burdens on thousands upon thousands of nonprofit church-affiliated organizations across the country. For large organizations that operate in multiple jurisdictions and that may be subject to conflicting or potentially conflicting interpretations of the "church plan" exception, the uncertainty will be extremely burdensome. And for smaller organizations that face uncertainty over their own legal obligations in light of the confusion in the federal courts, the burdens are also intolerable. Only this Court can provide a uniform answer to this important and recurring question concerning ERISA's coverage.

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[4] See, *e.g.*, *Fidelity Federal Bank & Trust* v. *Kehoe*, 547 U.S. 1051 (2006) (Scalia, J., joined by Alito, J., concurring in the denial of certiorari) (noting that "enormous potential liability" is "a strong factor in deciding whether to grant certiorari"); *United States* v. *Mitchell*, 463 U.S. 206, 211 & n.7 (1983) (explaining that issue on which review was granted was "of substantial importance" because it involved more than $100 million of potential liability of the United States); *FTC* v. *Jantzen, Inc.*, 386 U.S. 228, 229 (1967) (taking note of almost 400 pending administrative orders like the one being challenged). See generally E. GRESSMAN ET AL., SUPREME COURT PRACTICE § 4.13, at 269 (9th ed. 2007) (discussing additional cases).

Finally, it bears repeating that the issue presented affects an exceedingly wide range of church-affiliated nonprofit organizations, engaged in a variety of charitable activities aimed at helping many kinds of needy recipients, and not simply hospitals and healthcare entities such as those involved in these cases. As the list of more than 565 DOL advisory opinions and IRS private letter rulings included in the petition appendices demonstrates (see 16-74 Pet. App. 64a-111a; 16-86 Pet. App. 74a-121a), the affected organizations include retirement homes, nursing homes, day-care centers, schools and academies, universities, child-protection organizations, and many other types of social service organizations, including those that serve immigrants, refugees, the elderly, and the poor. The burdens imposed by the legal uncertainty and potential financial liability on these multifarious institutions will necessarily also be felt by the recipients of the services those institutions provide. For that reason, too, this case warrants the Court's review.

CONCLUSION

For the foregoing reasons, and those set forth in the petitions for a writ of certiorari, the petitions should be granted.

Respectfully submitted.

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August 15, 2016